

Remarks

Claims 1-4 have been canceled. Claims 5-11 remain in the application together with newly added claims 12-18, which includes two additional independent claims (netting 4 independent claims after cancellation of claim 1) and 5 dependent claims. Authorization is given to charge deposit account no. 50-1792 for the small entity fee for the additional independent claim.

The Applicant notes the examiner's rejection of Claims 5-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,350,435 in view of CN 1138467 and U.S. Patent No. 4,769,452 and respectfully requests reconsideration and withdrawal of said rejection in light of the following discussion.

The Applicant respectfully submits that Claims 5-11 are not unpatentable under 35 U.S.C. 103 (a) over the patents cited. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and *not* based on the Applicants' disclosure. MPEP § 2143. "In determining differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." MPEP § 2141.02 (emphasis in original) (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Norton Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)).

The patents cited by the examiner as a basis for the instant rejection teach compositions that would not be useful or effective as breath scent camouflage to make hunters' breath scent blend into the surrounding game environment when hunting. U.S. Patent No. 4,769,452 teaches the use of extracts of blood root to make mouthwashes to treat gum disease and bad breath, only mentioning glycerin for use to create a spray. U.S. Patent No. 6,350,435 teaches a composition to treat bad breath, including mint and menthol. Similarly CN 1138467 teaches a powder for a gargle for treatment of bad breath which also includes mint. These references teach away from the applicant's invention, which is not a breath freshener or treatment for bad breath, but rather a breath camouflage, a composition that blends the hunter's breath into the surroundings when in the game environment, so that game cannot detect a foreign scent. The definition of "camouflage" is to conceal something by making it appear to be part of the natural surroundings. See attached printout of "camouflage" from dictionary.com. If a hunter was to use the compositions taught by the patents cited by the examiner when hunting, the minty or otherwise fresh breath of the hunter would not be camouflaged by game, and would be detectable as a foreign scent. Thus there is no suggestion, much less a reasonable expectation of success, in combining the references cited by the examiner to achieve the applicant's invention.

The applicant's invention does not make human breath smell fresh or minty, although as an ingestible composition it does not have a bad taste. On the contrary, the applicant's invention hides human scent, making human breath smell like the game environment, in the true sense of the word camouflage. As noted in the specification, products that *are* currently used for the purpose of hiding breath scent when hunting consist of mask apparatus and/or mouthwashes containing activated carbon to absorb rather than emit a scent. The applicant's invention improves over those products by also preventing emission of a breath scent that is foreign to the game environment while not having an unpleasant taste or leaving an unpleasant residue as does

activated carbon or charcoal. One thing is to create a fresh scent and another is to neutralize and camouflage a scent. The fact is that there is absolutely nothing in the patents cited by the examiner that teaches or suggests camouflage functionality which is the essence of the applicant's invention. As such, the prior art references noted do not teach all of the Applicant's claim limitations, and *prima facie* obviousness is not established.

The Applicant respectfully submits that its invention as claimed is not obvious in view of the patents cited by the examiner. The Applicant further notes that its invention has achieved considerable commercial success, having been tested by the North American Hunt Club and earning its seal of approval. See attached Internet website printouts regarding same. Please also view the product website at www.drcorobreathbuster.com, which includes a playable media file of the product and how it works, which has appeared on ESPN (the Entertainment Sports Programming Network).

The Applicant therefore respectfully requests that examiner withdraw the rejections of the Applicant's claims. The Applicant respectfully submits that the application and claims are in condition for allowance. Nonetheless, should the examiner still have any comments, questions or suggestions, the examiner is respectfully requested to telephone the undersigned at the telephone number listed below.

Respectfully submitted,

Date: July 2, 2005

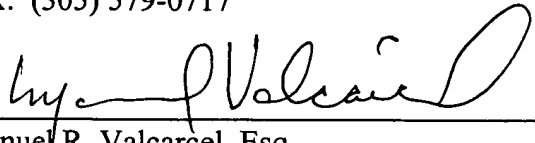
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